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ABSTRACT

This resource guide is intended to help teachers lead their students through an exploration of the issues and story of "After Chicago v. Morales." The guide explains that in 1992 the city of Chicago (Illinois) passed an ordinance authorizing the police to arrest people in a group if they failed to move along or were thought to belong to a gang. After the constitutionality of the law was challenged at all levels in the Illinois courts, it was declared unconstitutional by the Illinois Supreme Court and the decision was upheld by the U.S. Supreme Court. The guide finds that maintenance of public order, preservation of civil liberties, homelessness, and racial discrimination are some of the issues raised by "After Chicago v. Morales." The guide may supplement a study of the U.S. Constitution as an example of how legislation and the Constitution interact; classes concerned with society's problems; and classes to develop critical thinking. The guide seeks to provide teachers with substantive background from a variety of perspectives and sources for use in history, government, sociology, writing, and literature classes. It is divided into four chapters: (1) "Terms and Vocabulary"; (2) "Background about the Case"; (3) "The U.S. Supreme Court Case"; and (4) "Related Issues." Each chapter contains teaching activities and discussion questions. Includes 98 notes, a list of teaching resources, appendixes, and primary resources. (BT)

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City of Chicago v. Jesus Morales

A RESOURCE GUIDE FOR TEACHERS

SO 031 700

Youth Summit
ONLINE

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AFTER
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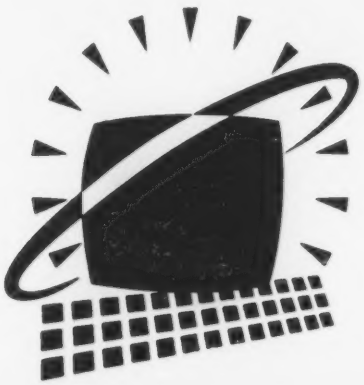

A RESOURCE GUIDE FOR TEACHERS

Defending Liberty
Pursuing Justice

AMERICAN BAR ASSOCIATION

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Chicago Municipal Code 8-4-015 (1992) 42

"Civil Liberties Back on the Street: Anti-Gang Efforts Struck Down; Ruling Criticized as Creating a 'Right to Loiter'" by David Savage, from the *ABA Journal*, August 1999. 43

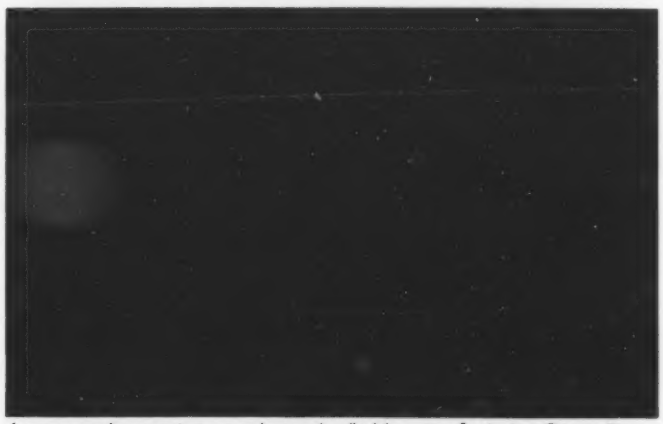
How to Use This Resource Guide

This resource guide is intended to help you lead your students through an exploration of the issues and story of *After Chicago v. Morales*. *After Chicago v. Morales* has wide-ranging practical and social implications for people across the country and can provide an excellent learning opportunity for students in diverse subject areas.

In 1992, the city of Chicago passed an ordinance authorizing the police to arrest people who were loitering in a group if they failed to move along or were thought to belong to a gang. The ordinance is part of a national trend towards creating "safe street" laws. The constitutionality of the law was challenged at all levels in the Illinois courts, and it was declared unconstitutional by the Illinois Supreme Court. The U.S. Supreme Court upheld the Illinois Supreme Court decision. Maintenance of public order, preservation of civil liberties, homelessness, and racial discrimination are just a few of the issues of concern to citizens across the country raised by *After Chicago v. Morales*.

Students studying the U.S. Constitution or government will find a good example of how legislation and the Constitution interact in *After Chicago v. Morales*. Classes concerned with society's problems will discover how laws can impact the homeless. Teachers wishing to develop critical thinking skills in their classrooms have in *After Chicago v. Morales* an opportunity to illustrate the difference between fact and opinion, to demonstrate how the same set of facts can be interpreted differently by people of good will. All these classes will discover that actions and laws may have unintended consequences.

This case can provide writing teachers with access to legal briefs for analysis of both logical argumentation and persuasive writing that can serve as useful models for students to emulate. Literature teachers may relate *After Chicago v. Morales* to early works of literature to illustrate the timelessness of certain human concerns. History, government, sociology, literature, writing—resourceful teachers will undoubtedly find ways to use these materials to explore law in society in ways that have not been outlined here. This resource guide seeks to provide you with substantive background from a variety of perspectives and sources on a cutting-edge case that you will not find in the textbooks.



A young man leans against a mural-covered wall while waiting for the bus. Chicago, Illinois. (CORBIS/Kevin Fleming).

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Objectives

Students will

- Learn that the Constitution is a living document
- Understand how judicial review holds the potential to directly impact their lives
- Apply the abstract concepts of authoritarianism, due process, totalitarianism, individual rights, and community rights to concrete situations
- Discern the distinction between civil liberties and civil rights
- Discuss contemporary issues such as community policing, order versus freedom, and race in our society
- Review the history of freedoms of association and assembly
- Learn new vocabulary and terms

Organization of Resource Guide

The resource guide is divided into four chapters:

- One: Terms & Vocabulary
- Two: Background About the Case
- Three: The U.S. Supreme Court Case
- Four: Related Issues

We wished to create a resource book that you would be able to digest in small bites between classes, during prep periods, or as you juggle your extracurricular with your curricular responsibilities. Each chapter is further subdivided into sections that are discrete and self-contained for quick review. Sections within chapters were titled with topic sentences or phrases designed to give you clues about the content.

The resource guide includes both chronological and topical chapters. The combining of chronological and topical chapters necessarily leads to some overlap with respect to the presentation of information. For example, one of the sections in Chapter Four: Related Issues is titled "The Chicago Law in Practice." Some of the information presented in this section is also presented in Chapter Two: Background About the Case in a section titled "The Law Is Enforced, Then Challenged in Illinois." We hope that the unavoidable overlapping of sections of the guide will have value in reinforcement rather than redundancy.

Terms and vocabulary that students may need to understand are listed at the beginning of chapters or appropriate sections.

At the conclusion of Chapters Two, Three, and Four, you will find classroom discussion questions and teaching activities/strategies.

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One: Terms & Vocabulary

One: Terms & Vocabulary offers working definitions of terms and vocabulary students may need to be familiar with to understand topics and issues discussed in relation to *After Chicago v. Morales*.

Some concepts and terms have been further developed within particular sections of particular chapters. References to the appropriate sections are included in the working definitions of these terms. As already mentioned, the student terms and vocabulary are listed at the beginning of the chapter.

Of particular importance to an understanding of this case is an understanding of the concept of *due process*—both procedural and substantive. You will find a separate specific section called "Understanding Due Process" in this guide. We urge you to become familiar with it or even to distribute a copy to students. More information about due process is also available on the **Youth Summit Web Site** at www.abanet.org/org/publiced/youth/fall99main.html.

Two: Background About the Case

This chronological chapter begins with a list of relevant terms and vocabulary, continues through the sections listed below, and concludes with discussion questions and teaching activities/strategies. Sections in Chapter Two include

- **Summary: *Chicago v. Morales***
  This section offers a summary of the case and issues.
- **An Anti-Gang Congregation Law Is Passed in Chicago**
  This section describes the nature of gang-related crime in Chicago, who supported or opposed the law, and the law itself.
- **The Law Is Enforced, Then Challenged in Illinois**
  This section includes information about who was arrested, who challenged the law, and the process through Illinois courts.
- **The Illinois Supreme Court Decision**
  This section offers a summary of the Illinois Supreme Court decision.
- **The Significance of *Chicago v. Morales***
  This section describes the significance of the case.
- **Teaching Activities/Strategies & Discussion Questions**

Three: The U.S. Supreme Court Case

This chronological chapter begins with a list of relevant terms and vocabulary, continues through the sections listed below, and concludes with discussion questions and teaching activities/strategies. Sections in Chapter Three include

- **Who Was Involved?**
  This section lists the young people who challenged the law, the groups that provided legal representation, and some of the special interest groups involved in the case. (A complete list of special interest groups with expressed interests in the case may found in Appendix 1. Links to their Web sites may be found at the **Youth Summit Web Site** at www.abanet.org/publiced/youth/fall99main.html.)

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- **The Arguments Against the Law's Constitutionality in the U.S. Supreme Court Case**
  This section lists and explains the four main arguments used by the lawyers who argued that the law was unconstitutional.
- **The Arguments for the Constitutionality of the Law in the U.S. Supreme Court Case**
  This section lists and explains the three main arguments made by the lawyers who argued that the law was constitutional.
- **A Divided Court Declares the Law Unconstitutional**
  This section describes the five main points of the Court's decision.
- **Justice O'Connor's Opinion Points to Possible New Directions for the Law**
  This section describes this justice's separate written opinion, which may point to a way to create constitutional anti-gang congregation laws.
- **Three Justices Defend the Constitutionality of the Law**
  This section outlines the key points of the judges who dissented.
- **Previous Related Cases**
  This section offers brief descriptions of three cases that are cited or referred to in media accounts of, the Supreme Court decisions for, and amicus briefs for *Chicago v. Morales*. (Links to the complete text of the U.S. Supreme Court decisions may be found at the **Youth Summit Web Site** at www.abanet.org/publiced/youth/fall99main.html.)
- **Teaching Activities/Strategies & Discussion Questions**

Four: Related Issues

This topical chapter begins with a list of relevant terms and vocabulary, continues through the sections listed below, and concludes with discussion questions and teaching activities/strategies. Sections in Chapter Four include

- **The Chicago Law in Practice**
  This section reviews, elaborates on, and brings together information presented in the chronological chapters about the nature of gang-related crime in Chicago before the law was passed and describes the arrest, prosecution, and conviction rates for the law.
- **Community Values**
  Community values often drive public policy choices. In this section, the law is discussed from a sociological perspective in the context of values.
- **The Law As an Example of a National Trend in Crime Prevention**
  This section places the anti-gang congregation ordinance within a spectrum of current crime prevention strategies designed to be tough on crime.
- **Community Policing**
  This section describes the crime prevention strategy called community policing. Sociologists and criminologists have contradictory views about the effectiveness and compatibility of loitering laws and community policing tactics.

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- **The Issue of Race and Racial Profiling**
  This section places the anti-gang congregation law within the context of current debates about the prevalence of racial profiling and discrimination by police towards minorities.

- **Praise and Criticism of the Law**
  This section summarizes the arguments used by public interest groups to support or oppose the law. These arguments are outlined in detail in the Amici Curiae briefs filed with the Court. (See Appendix 1 and its description below.) Some of these briefs may be found at the **Youth Summit Web Site** at www.abanet.org/publiced/youth/fall99main.html.)

- **Freedom of Assembly: Labor Unions**
  Many of the issues raised by the evolution of labor rights, including the right of labor to collectively assemble to determine policy for its interaction with management, are also raised by the case *Chicago v. Morales*. The freedoms to assemble and associate are essential to many activities we participate in and take for granted.

- **Freedom of Association: The McCarthy Era**
  The McCarthy Era represents a bleak moment in our history when the freedom to associate was significantly curtailed. While we cannot draw direct parallels between our right to associate through family or voluntary relationships with gang members and our right to associate with Communist Party members, the McCarthy Era provides us with an example of how extreme curtailment of rights can have extreme consequences.

- **Teaching Activities/Strategies & Discussion Questions**

Teaching Resources

We have compiled an annotated list of further resources that may be of use to your exploration of *Chicago v. Morales*. The list includes online, print, and video resources.

Appendices

The resource guide includes two Appendices, described below.

- **Appendix 1: Amici Curiae Briefs Filed in Support of Each Party in the Court Case**
  Amici curiae briefs are generally filed by interest groups to indicate to the Court that the Court's decision will have an impact on society in general. They represent a range of perspectives about a particular case, which are often influenced by an organizational mission, for example, to serve the homeless. These same groups that file amici curiae briefs offering opinions about court cases also often lobby elected officials who are considering pending legislation. We typically do not consider the role of interest groups in the judicial process.

- **Appendix 2: *Romeo and Juliet* and Public Disorder**
  The problem of maintaining public order without curtailing individual and group rights is not merely a contemporary problem. It is a very old social problem reaching back to the time of William Shakespeare. Appendix 2 offers some suggestions about how you might use *Romeo and Juliet* to show how questions of public disorder are timeless concerns while also illustrating the contemporary relevance of the work of William Shakespeare.

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Primary Resources

The resource guide includes two primary resources, described below.

- **City of Chicago Anti-Gang Congregation Ordinance**
- **"Civil Liberties Back on the Street," by David Savage, from the *ABA Journal*, August 1999.**

Newspaper accounts are a valuable teaching tool. You may wish to copy the article reproduced here to distribute to the class as homework or for classroom discussion.

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One: Terms & Vocabulary

Allegory
A description or illustration of one thing in terms of another that often makes use of symbolic, fictional characters.

Amicus brief
The term comes from the Latin *amicus curiae* meaning "friend-of-the-court." Sometimes other people besides the people directly involved in a case may have an interest in the outcome. These groups may file an amicus brief—a legal paper supporting one position or another—with the court. For more detail, see page 15.

Arbitrary enforcement of the law
Enforcing the law without adhering to general principles or rules by which to decide.

Authoritarianism
A political system in which power is concentrated in one individual or an elite group not constitutionally responsible to the people.

Bill of Rights
Refers to the first ten amendments to the U.S. Constitution.

Civil
In American law, most cases are either civil or criminal. In a civil case, one person, group, or entity sues another person, group, or entity to remedy infringement of private or civil rights.

Civil liberties/Civil rights (distinction between)
Civil liberties are guaranteed basic, natural human rights as expressed in a constitution's Bill of Rights that cannot be violated by a government. *Civil rights* is a relatively new concept that originates with the idea of the equality of all citizens and refers to positive acts of government that seek to make full, equal participation in democracy and constitutional guarantees a reality for all people.

Coalition
A temporary alliance of different groups, organizations, parties, or persons for joint action or purpose.

Common law
Developed in England as law common to the whole of England during the time of William I (1066–1087). Before that time, different local laws ruled different areas. Common law consists of rules based on common custom and usage. As courts developed, common law came to include judges' decisions in written reports. English common law is the basis for law in the United States.

Communism
A philosophy that originated in the writings of the 19th-century German thinkers Karl Marx and Friedrich Engels, emphasizing the common ownership of industry, agriculture, and national resources.

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Community policing
A policing philosophy and strategy whereby the police work directly with community groups to develop crime-prevention strategies.

Criteria
Standards on which a decision or judgment is made; also characteristics or traits.

Injunction
A court order that requires or forbids some specific act.

Jim Crow laws
A network of laws common in the southern United States until the 1960s that restricted voting rights and segregated African Americans in schools. They were established in the states in the 1880s and 1890s, upheld through a series of Supreme Court decisions, and eventually reached every aspect of life. Blacks and whites could not use the same washrooms, eat in the same restaurants, or use the same beaches, for example. African Americans had to ride at the back of buses and were barred from many hospitals.

Legal brief
A written statement prepared by one side in a lawsuit to explain to the court its view of the facts of a case and the law that applies to it.

Magna Carta
A charter granted by King John of England in 1215 to guarantee against the excessive use of royal power. It defined the feudal barons' obligation to the monarchy, confirmed the liberties of the English Church, and opposed the arbitrary application of justice. During the 17th century, it was reinterpreted by English thinkers as a democratic document.

McCarthy Era
A term used to refer to a period in American history following World War II characterized by a widespread public fear of communism that reached near-hysteria by the early 1950s. During this period, government-sanctioned persecution of people suspected of associating with communists or sympathizing with the ideas of communism was common. (For more detail, see "Freedom of Association" section.)

Monopoly
A business that controls so much of one product, service, industry, or resource that little or no competition exists.

Ordinance
A law established by a governmental authority. The term *ordinance* often refers to a local or municipal regulation, for example, the Chicago anti-gang congregation ordinance.

Pragmatism
A 19th-century American philosophy, influenced by the work of Charles Darwin. It proposed that society should rely for guidance not on inherited ideals or moral principles, but on ideas tested through scientific inquiry. Pragmatism interprets truth in terms of the practical effects of what is believed, as well as the usefulness of its effects.

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Precedent
A court decision on a question of law that gives direction to or authority on how to decide similar questions of law in future cases with similar facts. In the American court system, judges make decisions supported by precedent rather than based on their own logic and reason.

Probable cause
A reasonable belief based on known facts that a person has committed a crime or that property is connected with a crime.

Procedural due process
The right of people to enjoy certain constitutionally guaranteed procedures in the course of law. For example, if a person is accused of a crime, he or she must be (1) formally charged, (2) given a chance to defend him/herself, and (3) judged in a court of law.

Racial profiling
A police practice of targeting people for stops, searches, detention, and/or arrests based on their race or ethnicity.

Salem witch trials
In the 1680s and 1690s, New Englanders experienced widespread hysteria over witchcraft. The most famous instance was in Salem, Massachusetts. Before the Salem trials were over in 1692, 19 people were put to death. Modern researchers believe that the turmoil reflected severe tensions caused by the changing relationship of commerce and agriculture in the colonies and anxieties over changing sex roles.

Social controls
The collection of material and symbolic resources that a society has at its disposal to ensure that people conform to prescribed and sanctioned rules and principles. *Formal social controls* are things such as laws; *informal social controls* are things such as the rules parents establish for children.

Statute
A law passed by a legislative body.

Substantive due process
The actual rights a person has that are spelled out in the Constitution such as the rights to life, liberty, property, speech, press, religion, and assembly and the right to petition government, as well as some additional rights not spelled out in the Constitution but interpreted through the courts as rights, such as the right to privacy when making decisions. See "Understanding Due Process" section.

Totalitarianism
An extreme form of authoritarianism that places the individual under strict state control, often severely limiting individual liberties such as free speech. The state also controls all aspects of life as well as the resources of a country.

Trust
Several corporations that combine their stock and allow a common board of directors to run the corporation as one large enterprise.

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Terms & Vocabulary: arbitrary enforcement of the law, Bill of Rights, civil liberties, common law, Jim Crow laws, Magna Carta, procedural due process, substantive due process

Understanding Due Process

The due process clauses of the Fifth and Fourteenth Amendments of the Constitution provide that no one can be deprived of life, liberty, or property without "due process of the law." The concept of due process can be traced back to the Magna Carta.

Due process focuses on life, liberty, and property. Life can be defined as all protected personal rights. Liberty covers a vast scope of rights that have been determined over time by the judiciary. Property is anything that is subject to ownership. Determining what due process means has been one of the primary focuses of the judiciary. Judges' decisions have been influenced partly by common law traditions and partly by changes in contemporary values and political and economic conditions.

> **My study of the historical events that culminated in the Fourteenth Amendment, and the expressions of those who sponsored and favored, as well as those who opposed its submission and passage, persuades me that one of the chief objects that the provisions of the Amendment's first section, separately, and as a whole, were intended to accomplish was to make the Bill of Rights applicable to the states.**
>
> Hugo Black, *Adamson v. California*, 332 U.S. 46 (1947) (dissenting).

The guarantee of due process protects people from unfairness in law. It creates, defines, and regulates rights defining the relationship of the government to the individual and the relationships between individuals. These laws are referred to as substantive laws. Most substantive law is created by the legislative branch of government. The guarantee of due process also protects people from unfairness in procedural law—the methods used to enforce laws. Procedural due process gives people a way to enforce their rights and remedy abuses if their rights have been denied.

The Fifth Amendment's due process clause places limits on the federal government. Part of the original Bill of Rights, it was originally intended to protect property rights from governmental regulation. For example, in the Dred Scott case, it was interpreted to mean that Congress couldn't make slavery illegal. Historians often comment on the irony of the original intent, which was prevalent until the 1940s, because of the role that due process played during the Civil Rights era in securing civil liberties and equal protection under the law for African Americans.

The Fourteenth Amendment prohibits the states from denying due process rights to an individual or group of people. It is one of three amendments referred to as the "Civil War Amendments." They were added to the Constitution after the Civil War and were intended to protect the rights of formerly enslaved people during Reconstruction. However, until the 1940s, the Fourteenth Amendment was applied most often to the rights of businesses. In the 1950s and 1960s, the U.S. Supreme Court began to rule that the Fourteenth Amendment prohibited state and local governments from denying individuals their due process rights. These interpretations made the rights to life, liberty, and property the rights of all U.S. citizens and were instrumental in bringing about the end of the Jim Crow laws.

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Two: Background About the Case

Summary: *Chicago v. Morales*

From 1990–92, the city of Chicago experienced a sharp increase in gang-related violence. In 1992, the city passed an anti-gang congregation ordinance. The law is part of a national trend toward creating "safe street" laws in response to violence. Debates about the Chicago ordinance raised issues about the conflict between the rights of individuals and the duties of the state, as well as the need for a balance between order and freedom.

The problem of maintaining public order without curtailing individual and group rights is not merely a contemporary concern. It is a very old social problem reaching back to the time of William Shakespeare. Shakespeare's plays often illustrate in vivid ways how easily public loitering can deteriorate into public discord.[1]

The constitutionality of the Chicago law was challenged at all levels in the Illinois courts. It was declared unconstitutional by the Illinois Supreme Court in 1997. The U.S. Supreme Court agreed to review the ruling. In the context of the history of police discrimination against minorities in the U.S., the evidence that the Chicago law mostly affected the lives of innocent people of color infused the debate with an issue of long-standing interest to Americans: the issue of race.

Despite visible divisions and a small margin of agreement, on June 10, 1999, the U.S. Supreme Court upheld the Illinois Supreme Court decision. The justices wrote six separate opinions. The separate opinions have been interpreted as a whole to indicate that challenges to other equally long-standing legal precedents may follow.

Meanwhile, the city of Chicago intends to rewrite the anti-gang congregation law. The story of *After Chicago v. Morales* illustrates the way that the Constitution is a living document. The U.S. Supreme Court decision in *City of Chicago v. Morales* may represent a momentary truce.

Who is Jesus Morales?

Jesus Morales is one of a group of Hispanic teenagers arrested under Chicago's anti-gang congregation law after he was approached by police while standing on a street corner talking with citizens in a Caucasian neighborhood. The arresting officer originally approached the teenagers because he wanted to know if they lived in the neighborhood. He didn't recognize Morales or any of the others but judged them to be gang members because they were wearing blue and black clothing, which were allegedly gang colors. None of the teenagers are self-admitted gang members.

See American Civil Liberties Union, *City of Chicago, Petitioner, v. Jesus Morales, et al, Respondents, Brief of Respondents*, 97-1121: 31–32.

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Terms & Vocabulary *(relevant for the next four sections)*: ordinance, substantive due process

An Anti-Gang Congregation Law Is Passed in Chicago

During 1992, the city council of Chicago held extensive hearings on the problems of street crime, particularly crime caused by gang members. Through the course of the hearings, the city came to believe that an increasing gang presence in specific neighborhoods intimidated residents and gave them justifiable reason to fear for their safety and property. Justice Department figures show that there are 23,000 youth gangs in the United States, with a total membership of more than 650,000. One hundred and twenty-five of these gangs operate on the Chicago streets.[2] In 1998, police estimated that Chicago street gangs had more than 10,000 members, and they were responsible for 182 deaths.[3]

> There's a war going on, and we have to protect the good people who can't take the gangs anymore.
>
> Chicago Ald. Ed Smith, *Chicago Tribune*, May 15, 1999.

The anti-gang congregation ordinance was passed by a predominantly white city council. The majority of Chicago's African-American aldermen voted against the ordinance. The National Association for the Advancement of Colored People (NAACP), the Chicago Alliance for Neighborhood Safety, the Chicago Black Police Association, and the Chicago Coalition for the Homeless were among the civic and community groups that opposed the ordinance.[4] The ordinance stated:

> Whenever a police officer observes a person he reasonably believes to be a criminal street gang member loitering in any public place with one or more other persons, he shall order all such persons to disperse and remove themselves from the area. Any person who does not promptly obey such an order is in violation of this section (Chicago Municipal Code, Sec. 8–4–015).

Loiter was defined as "to remain in any one place with no apparent purpose." Violation of the ordinance was to be punishable by up to six months in prison, a $500 fine, and up to 120 hours of community service. If someone charged under the ordinance established that none of the people observed "loitering" were gang members, he or she was to be released.

The Law Is Enforced, Then Challenged in Illinois

During the three years that the ordinance was enforced, roughly 89,000 orders to disperse were issued and 43,000 arrests were made.[5] Of those arrested, less than one percent—70 people—were prosecuted, and six were found guilty and received short jail terms.[6] But an Illinois appellate court overturned the convictions. Sixty-six of the people arrested for loitering during the three years that the law was enforced challenged its constitutionality in the Illinois courts.[7]

After various contradictory rulings by trial court judges, the Illinois Appellate Court, 3rd District, ruled that the ordinance was unconstitutional.[8] The ruling stated that the law "smacks of a police-state tactic."[9] The city appealed to the Illinois Supreme Court, which consolidated several cases challenging the gang-congregation law and agreed to hear the case. The American Civil Liberties Union (ACLU), which brought the case before the Illinois Supreme Court on the behalf of Jesus Morales and 65 other young men who

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challenged the law's constitutionality, widely criticized the ordinance because the majority of those arrested under the law were young Latino or African-American men.[10]

> We are very pleased that the Illinois Supreme Court has stepped in and prevented the City of Chicago from continuing to harass and arrest people merely on the basis of their associations and when there in no evidence of a crime being committed.
>
> Harvey Grossman, Legal Director of Illinois ACLU

The Illinois Supreme Court Decision

In a unanimous 1997 ruling, the Illinois Supreme Court upheld the decision of the appellate court.[11] The Illinois Supreme Court concluded that the anti-gang congregation law was impermissibly vague. The court believed that the law failed to sufficiently explain what conduct would violate the law. It also failed to provide sufficient guidance to the police about when to arrest people. In addition, people with legitimate and lawful purposes would not always be able to make their purposes clear to an observing police officer. The court gave examples: people waiting to hail a taxi, resting on a corner during a jog, or stepping into a doorway to get out of the rain. Finally, the court ruled that the law violated constitutional guarantees of "substantive due process." The law infringed upon the right to travel and move freely and the general right to associate with others.[12] "We are very pleased that the Illinois Supreme Court has stepped in and prevented the city of Chicago from continuing to harass and arrest people merely on the basis of their associations and when there in no evidence of a crime being committed," said Harvey Grossman, Legal Director of Illinois ACLU and one of the attorneys who argued the case before the Illinois court.[13]

The Significance of *Chicago v. Morales*

City of Chicago v. Morales was significant because it challenged a widely applied ordinance used by a major city to counter a serious problem, and the decision would provide communities throughout the country with an important determination about the availability of a weapon for combating the spread of gangs.[14]

City of Chicago v. Morales also offered the Supreme Court an opportunity to reaffirm, restrict, or reverse the unanimous ruling of a previous court that was less than 30 years old. The Court's decision might indicate receptiveness to the arguments of law enforcement that accepted the theories of safe street laws over the arguments of people who espoused the importance of individual rights. (For more about safe street laws, see "Community Values" section.) In addition, the review may indicate a willingness to consider challenges to other equally settled legal decisions.[15]

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Teaching Activities/Strategies & Discussion Questions

Check for Student Understanding of

Arbitrary application of the law, due process (procedural and substantive), ordinance, pragmatism, and precedent.

Teaching Activities/Strategies

1. Use the section in the resource guide titled "Previous Related Cases" and the examples from the three cases as a way to begin to talk about *due process*. Elicit responses from students about whether due process rights were involved in these cases. How were due process rights violated?

2. Assign the reading from the resource guide "Understanding Due Process." Talk about it in class. Ask students to think about due process in their own terms. Break the class into small groups. Ask each group to come up with one scenario that demonstrates a violation of substantive due process and another scenario that demonstrates a violation of procedural due process. Ask each group to report its scenarios.

3. Introduce students to the working definition of *precedent*. Use the section in the resource guide titled "Previous Related Cases" to talk about precedent.

4. Present the arrest and conviction statistics for the ordinance to students.

    - 89,000 orders to disperse issued
    - 43,000 arrests made
    - 70 people prosecuted
    - 6 originally found guilty

    Introduce students to the working definition of the term *pragmatism*. Use these statistics as a way to talk about pragmatism. Do they feel the anti-gang congregation ordinance meets the test of pragmatism?

Discussion Questions

1. How would the Chicago anti-gang congregation ordinance affect your [*students'*] everyday activities? (See the section of the resource guide titled "Primary Resources" for the text of the ordinance. Do you think it would prevent you from waiting for the school bus or camping out to get concert tickets? Would you be able to skateboard with friends in a parking lot? What kind of activities would the Chicago anti-gang congregation law apply to? What does the right to freedom of movement refer to? What does the freedom to travel refer to? Ask students to think of other things they and others do outdoors. Would they be allowed?

2. Is the "right" to bike, in-line skate, or skateboard on a public sidewalk or in a public parking lot, or to hang out in a public place a right or a privilege? What is the difference between a right and a privilege?

3. Does your school prohibit students from wearing certain articles of clothing or color combinations? Why do schools place these sorts of restrictions on students and what legal concept allows them to do so? Do you believe that it's reasonable to limit students' rights?

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Three: The U.S. Supreme Court Case

Terms & Vocabulary *(relevant for the next seven sections):* amicus curiae, arbitrary enforcement of the law, civil liberties, community policing, criteria, legal brief, Magna Carta, ordinance, pragmatism, precedent, procedural due process, substantive due process

Who Was Involved?

Jesus Morales and 65 other young men challenged the constitutionality of the law in the U.S. Supreme Court. They were represented by lawyers from the Roger Baldwin Foundation of the ACLU and the Office of the Cook County, Illinois, Public Defender. The ACLU is grounded in the belief that the fundamental civil liberties of individuals must be safeguarded from the government. Other organizations that opposed the ordinance included the National Association for the Advancement of Colored People (NAACP), associations and advocacy groups for the homeless, the National Council of La Raza, the National and Chicago Black Police Councils, the Mexican-American Legal Defense Fund, and criminal defense lawyers. The majority of Chicago's African-American aldermen also opposed the ordinance.[16]

In addition to the city of Chicago, 36 states and U.S. territories and the National League of Cities supported the ordinance. The Washington Legal Foundation, the International Chiefs of Police, and the Center for the Community Interest, a self-described "common sense counter to the ACLU—without going to the other extreme," believed the Chicago law was constitutional.[17]

The Arguments Against the Law's Constitutionality in the U.S. Supreme Court Case

The lead attorneys for Morales and the 65 other people who challenged the law's constitutionality were Harvey Grossman from the ACLU and James H. Reddy of the Office of the Cook County, Illinois, Public Defender. They argued four main points:

1. The anti-gang congregation ordinance was vague.

   Sixty years of U.S. Supreme Court decisions have ruled against vague anti-loitering laws. They argued that the law failed to provide people with a way to know when their behavior was illegal, fair warning that behavior was illegal, or criteria for how they could alter their behavior to comply with the law. The ordinance didn't distinguish between innocent activity and activity designed to cause harm.

2. The ordinance didn't establish minimal guidelines to guide law enforcement activities. The ordinance provided no guidance to the police about how to evaluate the behavior of people accused of violations. Decisions were left to police discretion.

3. The ordinance placed a restriction on a person's fundamental right to move freely and associate in public places.

   The right to move freely in public places is an essential guarantee provided by the concept of substantive due process of the law—the

What is an amicus brief?

The term comes from the Latin *amicus curiae* meaning "friend-of-the-court." In some cases, especially in those that have been appealed, other people besides the people directly involved may have an interest in the outcome. These groups may file an amicus brief—a legal paper supporting one position or another—with the court. When people or organizations file amicus curiae briefs, they usually suggest that the court's decision will have an impact on them or society in general that the court should consider when making a decision.

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concept that states do not have the right to unreasonably or arbitrarily deny individuals certain personal liberties. The right to free movement is firmly grounded in the nation's history and was first guaranteed in Britain's Magna Carta.

4. The ordinance might be applied to a wide array of innocent activities that fall under the First Amendment rights of free speech, assembly, and association.

   For instance, the ordinance penalized individuals merely for membership in or association with a gang. A mother standing in public with her child, for example, could be penalized if her child was a gang member. Similarly, two neighbors discussing the arrival of Asian beetles in front of their homes might be asked to move along, regardless of involvement in an actual crime.

The Arguments for the Constitutionality of the Law in the U.S. Supreme Court Case

> I loafe and invite my soul,
> I lean and loafe at my ease observing a spear of summer grass.
>
> Walt Whitman, "I Celebrate Myself," from *Leaves of Grass*.

The lead lawyer for the city of Chicago was Lawrence Rosenthal. He attempted to refute the critics of the law by arguing three main points:

1. The ordinance was not vague.

   Before an arrest could be made, police were required to evaluate three conditions. A person must loiter "without apparent purpose," he/she must refuse to move along when ordered to do so, and the police must "reasonably believe" that one member of the group belongs to a "street gang"—a term defined by the ordinance.

2. Loitering is not a basic constitutional right.

3. The ordinance did provide guidelines to the police about how it should be enforced.

   Two months after the ordinance was adopted, the Chicago Police Department issued General Order 92-4 to provide guidelines to govern enforcement of the ordinance. General Order 92-4 restricted authority to arrest gang members who violated the ordinance to "sworn members of the Gang Crime Section" and certain other designated officers and established criteria for defining street gangs and determining gang membership. The order also directed district commanders to designate areas in which the presence of gang members had a "demonstrable" effect on law-abiding people in the community and authorized the enforcement of the anti-gang congregation law only within those areas. The city argued that these limitations would safeguard against arbitrary enforcement. The law was a rational means to ensure public safety when all other existing laws failed to curb the expansion of the menace of street gangs. The police action authorized by the anti-gang congregation law was minimally intrusive; the government interests were substantial in an environment characterized by "a collection of brazen, disorderly and visibly lawless persons on the public ways that [*that*] intimidates residents, detracts from property values, and ultimately destabilizes communities."[18]

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A Divided Court Declares the Law Unconstitutional

With a 6-3 ruling, the U.S. Supreme Court struck down Chicago's anti-gang congregation law in a decision issued on June 10, 1999. The justices wrote six separate opinions. Justice John Paul Stevens wrote the majority decision for Justices Stephen Breyer, Ruth Bader Ginsburg, Anthony Kennedy, and David Souter, which included the main points of agreement.

What did the justices decide? Justice Stevens wrote:

Judged the Ordinance to be Unconstitutional:
Justices Ruth Bader Ginsburg, Stephen G. Breyer, Anthony M. Kennedy, Sandra Day O'Connor, David Souter, John Paul Stevens

1. The ordinance was vague.

   It left the public uncertain as to what conduct was illegal and failed to clarify what loiterers must do to meet an order to disperse.

2. The ordinance failed to provide minimal guidelines to govern the police.

   The justices did not judge General Order 92-4 to provide sufficient guidance to the police. In addition, they noted that the city did not make the locations of the designated enforcement areas known to the public.

3. The ordinance gave police officers too much discretion.

4. The ordinance made no distinction between "innocent conduct and harmful conduct."

   Justice Stevens wrote, "Even total strangers might unwittingly engage in forbidden loitering if they happen to engage in idle conversation with a gang member."

5. The ordinance violated the concept of due process of the law.

   The ordinance failed to give people adequate notice of what conduct was illegal and violated fair practices with respect to law.

Some members of the majority also reasoned that the ordinance failed to give the public enough notice to conform to the law. Justice Stevens wrote, "An order cannot retroactively give adequate warning of the boundary between the permissible and the impermissible applications of the law."

After the opinions on this case were released, some commentators noted that only three of the justices, Souter, Ginsburg, and Stevens, were prepared to recognize loitering as a liberty protected by the Fourteenth Amendment's due process guarantee.[19]

These three justices maintained that the freedom to loiter "for innocent purposes" is part of the "liberty" guaranteed under the "due process clause" of the Fourteenth Amendment, but they did not find any violation of First Amendment rights.[20] The law did not prohibit free speech. If gang members were demonstrating, Justice Stevens wrote, it would be apparent, which would make the ordinance inapplicable. Based on prior case precedents, Justice Stevens also wrote, the ordinance would not restrict gang members' right to associate, nor the right of other people to associate with gang members.

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Justice O'Connor's Opinion Points to Possible New Directions for the Law

Although Justice O'Connor voted with the majority of the Court, her separate opinion, also signed by Justice Breyer, raised several significant issues. The city of Chicago and some political commentators interpreted her opinion as offering a way to rework the anti-gang congregation ordinance so that it would meet constitutional standards.[21] Justice O'Connor wrote:

> In my view, the gang loitering ordinance could have been construed more narrowly. The term "loiter" might possibly be construed in a more limited fashion to mean "to remain in any one place with no apparent purpose other than to establish control over identifiable areas, to intimidate others from entering those areas, or to conceal illegal activities." Such a definition would be consistent with the Chicago City Council's findings and would avoid the vagueness problems of the ordinance as construed by the Illinois Supreme Court.

Edwin Yohnka, the director of communications for the ACLU of Illinois, said, "The attempt by City Hall to spin the decision as a victory is overreaching and unsupportable. America's proud tradition of constitutional protection does not allow even seemingly popular policies to trample individual rights."[22] After the Court's majority decision was announced, representatives of the city of Chicago indicated that the city would review the Court's decision and rewrite the law.[23]

Three Justices Defend the Constitutionality of the Law

Judged the Ordinance to be Constitutional:
Justices William H. Rehnquist, Antonin Scalia, Clarence Thomas

Justices Rehnquist, Scalia, and Thomas judged the law to be constitutional. In a detailed opinion, Justice Antonin Scalia wrote that the majority of the justices had elevated loitering to a constitutionally guaranteed right where none existed. Justice Scalia wrote, "There is not the slightest evidence for the existence of a genuine constitutional right to loiter." He wrote that the majority opinion also attributed vagueness where none existed. The law was "a perfectly reasonable measure" that placed minor limitations on the citizens of Chicago in order to liberate the streets from gang members and make neighborhoods safe for law-abiding citizens.

Justice Clarence Thomas also wrote a detailed opinion in which he argued that the law simply confirmed the principle that the police are duty bound to maintain the public peace and to disperse groups who threaten that peace. He wrote, "Laws prohibiting loitering and vagrancy have been a fixture of Anglo-American law at least since the time of the Norman Conquest." He criticized the majority opinion for, in his view, focusing on the rights of gang members while sentencing "law-abiding citizens to lives of terror and misery."

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Previous Related Cases

Kolender v. Lawson, 461 U.S. 352 (1983)

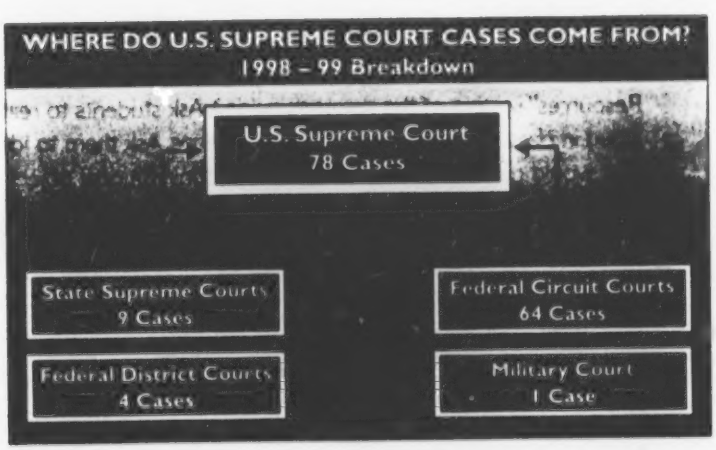
Edward Lawson is an African-American man, who at the time of this case wore his hair in long dreadlocks. After being continually harassed and questioned by police when he appeared in white neighborhoods, he challenged a California law "that requires persons who loiter or wander on the streets to provide a 'credible and reliable' identification and to account for their presence when requested by a police officer." The U.S. Supreme Court found that the law gave too much power to police to stop individuals for vaguely defined reasons and could unconstitutionally infringe upon citizens' rights to freedom of movement.

Papachristou v. City of Jacksonville, 405 U.S. 156 (1972)

The petitioners in this case were individuals convicted for various reasons—such as not having a good reason for going where they were going and walking at night—under Jacksonville's vagrancy law. The U.S. Supreme Court found that the vagrancy law did not give concrete guidelines defining legal and illegal activities and made innocent actions illegal. The justices found that the ordinance gave too much discretion to local police and too little opportunity to citizens to live as they pleased: "Those generally implicated by the imprecise terms of the ordinance—poor people, nonconformists, dissenters, idlers—may be required to comport themselves according to the lifestyle deemed appropriate by the Jacksonville police and the courts."

Shuttlesworth v. Birmingham, 394 U.S. 147 (1969)

Fred L. Shuttlesworth, a minister who led an orderly march to protest the city of Birmingham's denial of basic civil rights for African Americans, was arrested for violating an ordinance requiring permits for marches. Shuttlesworth had applied for a permit but was denied; the ordinance allowed the permit commission to refuse a parade permit if its members believed "the public welfare, peace, safety, health, decency, good order, morals or convenience require that it be refused." The ruling found that the law was vague and that the commission's refusal to grant a permit in this instance was discriminatory and an illegal violation of Fred Shuttlesworth's First Amendment rights because it denied his right to free assembly.



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Teaching Activities/Strategies & Discussion Questions

Check for Student Understanding of

American Civil Liberties Union, arbitrary application of the law, Center for Community Interest, criteria, civil liberties, due process, National Association for the Advancement of Colored People, ordinance, pragmatism, precedent, Washington Legal Foundation

Teaching Activities/Strategies

1. Ask students to read the article from the **First Amendment Center**'s online magazine *Free!* titled "First Amendment Not a Victor in Defeat of Chicago Anti-Gang Ordinance," by Tony Mauro (at www.freedomforum.org/assembly/1999/6/11sctantigang.asp). According to the article, what did the Supreme Court decision say about civil liberties? Break students into six groups. Ask each group to review one of the six opinions issued for *Chicago v. Morales* and report back to the rest of the class about what each opinion and the decision said about civil liberties. (The decision/opinions in *Chicago v. Morales* may be found by following links on the **Youth Summit Web Site** at www.abanet.org/publiced/youth/fall99main.html). Compare the group reports about civil liberties to the account by Tony Mauro. Do the classroom reporters reach the same conclusions as Tony Mauro? If not, how do the conclusions differ?

2. Distribute the pages from the resource guide about the U.S. Supreme Court decision and differing opinions or distribute copies of the actual opinions, which may be found at http://caselaw.findlaw.com/cgi-bin/getcase.pl?court=US&vol=000&invol=97-1121. Review the pages or written opinions in class or assign the reading as homework. Define *dissent*. (*Dissent* is a court opinion setting forth the minority view and outlining the disagreement of one or more judges with the decision of the majority.) Ask students:

   - What does the decision say about the Chicago law and due process?
   - What does the decision say about the Chicago law and civil liberties?
   - What did the dissenters write about loitering and civil liberties?
   - Do students agree with the decision or the opinions expressed by the dissenters? Why or why not?

3. Review the City of Chicago Anti-Gang Congregation Ordinance. (A copy may be found in the "Primary Resources" section of the resource guide.) Ask students to read it as a homework assignment or read it aloud in class. Break students into small groups. Ask them to identify the key sections of the Chicago law that would need to be changed to meet constitutional objections. Ask them to rewrite those sections.

4. Ask students to research the missions of some of the interest groups that filed amicus briefs in *Chicago v. Morales*. (Some of these groups may be found by following links on the **Youth Summit Web Site** at www.abanet.org/publiced/youth/fall99main.html.) Ask students to give oral reports interpreting how they believe the anti-gang congregation law would affect the people specific interest groups seek to serve, or how the law might further the groups' missions, using material from research to support their positions.

5. Ask students to get a local parade permit. Have them assess the process. Ask students to identify and discuss circumstances when it would be in the public interest to know beforehand about assemblies, as

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well as potentials for abuse. (For example, assembly permits were denied to some applicants during the Civil Rights Era because the assembly causes were unpopular.)

6. Ask students to draw political cartoons expressing their opinions about issues such as the freedom of assembly, the freedom of association, hanging out, or being asked to move along by an authority figure, or about their opinions about the U.S. Supreme Court decision in *Chicago v. Morales*. For classroom examples of political cartoons, check out issues of *The New Yorker* magazine, the opinion or editorial pages of certain daily papers, or the Sunday comics. (A useful site is the **Teacher's Guide to the Professional Cartoonists' Index**, located at www.cagle.com/teacher. Created by a middle school teacher in the Los Angeles Unified School District, the site includes lesson plans with games designed to explore and interpret cartoon symbolism. The **Professional Cartoonists' Index** may be found at www.cagle.com.)

7. Have students think about their own interests and concerns. Do they in-line skate, ride a skateboard, or ride a bike? Where do they hang out? Think of places in the community such as a public library, local museum, shopping mall, public square, pedestrian mall, downtown area, or park. Do these places have implied or posted rules? Does your community have rules prohibiting in-line skaters, skateboarders, or bikers from using equipment on sidewalks? Do parks close at certain times of night? Does your town have ordinances about all-age shows at music clubs? A curfew law? Discuss why some activities specific to students' experience have limits. Identify the different interests affected by the local laws and who has a stake in placing limits and why.

8. Download some of the amicus briefs from the **Youth Summit Web Site** (www.abanet.org/public-ed/youth/fall99main.html) and use the briefs to illustrate persuasive writing. Analyze, as a class activity, the structure of a particular brief with emphasis on its development of a logical argument, its use of facts and evidence, the difference between fact and opinion, and its use of precedent and tradition.

Discussion Questions

1. According the U.S. Supreme Court decision, in what way did the Chicago ordinance violate due process of the law?

2. How would you [*students*] feel about being asked by police if you belong to a gang? How would you feel if police assumed you belong to a gang? Do you think that it is possible to develop fair guidelines for police to determine if someone is a gang member when encountering the person on the street? Why or why not? If you answer yes, what guidelines do you think would be fair?

3. After studying *Chicago v. Morales*, do you believe that the procedures followed by the police or the city of Chicago were fair? If not, which one(s) and why not?

4. Do you think that it's fair for judges who do not live in neighborhoods affected by certain laws to issue rulings about them? How much importance should a judge give to support from a community for a law when ruling on a law or a question of law? Do you think that contemporary values, politics, and economic conditions influence the way a judge makes decisions? Can you give some examples from history?

5. If you felt threatened by people when you walked around your community, would you be willing to give up some of your freedom to feel safe? If so, what freedoms would you be willing to give up and to what degree?

6. If groups of young people are prevented by a law from hanging out in public places, do you think the government has a responsibility to provide them with a legal hangout such as a skateboard park or a community or youth center?

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Terms & Vocabulary: ordinance

The Chicago Law in Practice

The 1990 and 1991 murder rates in Chicago increased significantly over previous years. The number of murders attributed to gang-related violence also increased.[24] Before passing the law, the Chicago city council's Committee on Police and Fire held public hearings about the problems of street gangs in Chicago. Thirty people testified at the hearing about their fears and experiences of gangs and gang-related violence. Three aldermen in high-crime areas on the south and west sides of the city testified that they believed the city had enough crime laws to fight gang violence.[25] But the Police and Fire Committee voted 6-1 to recommend the law to the full city council. Alderman Virgil Jones, a former police officer, voted against the ordinance because he was afraid it would face legal challenges and might lead to police abuses.[26]

City of Chicago Crime Statistics

	Homicides	Gang-related
1989	782	72
1990	851	101
1991	927	133
1992	940	116
1993	850	129

From Chicago Police Department, Bureau of Operations Services, Research and Development Division. *Detective Division Murder Analysis 1989–1993*, Sept. 13, 1999.

The full Chicago city council passed the anti-gang congregation law in 1992. The city council was predominantly white. Most of the African-American council members voted against the law.[27] The city also passed tough curfew laws. Community crime monitoring groups were set up. More Chicago police were assigned to high-crime areas.

Murders began to decrease in 1993, although the numbers of murders attributed to gang violence increased over the 1992 level.[28] People who supported the anti-gang congregation law thought that it was responsible for the decrease in gang-related crime. There is no evidence either way. The rest of the nation experienced a decrease in crime during those years as well.[29] Crime continued to decrease even after Chicago stopped enforcing the law.[30]

The anti-gang congregation law was in effect for three years before the city was ordered to stop enforcing it while it was being appealed to different courts. During those three years

- 89,000 orders to move along were issued.
- 43,000 arrests were made.
- 70 people were prosecuted.
- 6 people were found guilty.

Of the people arrested, less than one percent were prosecuted. An Illinois appellate court overturned the convictions of the six people who were found guilty and received sentences.[31]

> **"There's always a balance between individual liberties and the right of a community to live without fear..."**
>
> Chicago Alderman Joseph Moore, *Chicago Tribune*, May 19, 1999

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Terms & Vocabulary: safe street laws (defined below), social control

Community Values

In recent years, some theorists have proposed that the phenomena that accompany crime may be partially responsible for it. Symptoms of urban decline—graffiti, broken windows, petty crime—signal that "there are no rules."[32] These theorists believe there is a "strong correlation between citizens' perception of their community's level of social order and their actual level of crime."[33] People are more likely to commit crimes when they perceive that others are committing crimes or expect crimes to be committed.[34] As disorderly behavior increases, people stay off the streets, those who can afford to leave move, and informal social control breaks down. Informal social controls are the informal networks communities depend on to perpetuate community values—friendship networks and family, and the moral codes and religious sanctions they instill. When informal social controls are weak, the result may be "tough laws enforced by tough cops."[35] These tough laws are often referred to as "safe street laws." Examples of safe street laws include the Chicago anti-gang congregation law and curfew laws.

> Where law comes from can be just as important as its content in determining its effectiveness in fighting crime. Norm-focused law enforcement strategies (such as the Chicago law) emphasize policymaking from the bottom up. . . . When inner city residents can choose for themselves the law enforcement policies that will work for them, crime is reduced through community empowerment.
>
> Tracey L. Meares and Dan M. Kahan

Tracey L. Meares and Dan M. Kahan, authors of a friend-of-the-court brief on behalf of organizations that favored the Chicago law, believe that safe street laws empower communities in crisis.[36] They refer to these laws as examples of "order maintenance policing" and "public order policing."[37] They believe these laws alter the perceptions within a community that crime will be tolerated. There is evidence that gangs loiter to "mark turf."[38] If this loitering is monitored by police, residents begin to feel safe on the streets and criminals perceive that crime will not be tolerated. Citizens begin to see that their values are reflected in the community structure, and they become empowered.

When these perceptions shift, communities can take positive steps to reinforce informal-social norms (community values) through reinvigorated informal social control networks. Breaking up groups of young people who are hanging out with gang members also takes away the status of gang activity. Sociologists believe that young people who are supervised and have their activity monitored by their parents engage in less delinquent behavior. Some sociologists see community supervision of young people as analogous to parental supervision of kids, and loitering laws as analogous to some kinds of parental rules.[39]

Meares and Kahan believe the people most affected by crime in Chicago supported the anti-gang congregation law because it reflected their desire for order. Yet there is no conclusive evidence that these types of laws work or specifically that the Chicago ordinance worked.[40]

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Terms & Vocabulary: community policing, criteria, injunction, ordinance, probable cause

The Law as an Example of a National Trend in Crime Prevention

The Chicago anti-gang congregation ordinance is part of a national trend to combat crime by employing community policing techniques that tackle quality of life issues such as graffiti, broken windows, and petty crime and by passing "safe streets" laws.[42]

Although the Chicago anti-gang congregation law has not been duplicated elsewhere, "loitering stops" and loitering laws aimed at gangs or the homeless have been used in states across the country. Some have been tested in the courts in recent years.[43] In Mount Prospect, Illinois, police may stop and question suspected gang members if they reasonably suspect they are committing or are about to commit a crime.[44] In Kentucky, police may arrest people for loitering if they identify "probable cause" in connection with loitering.[45] In San Jose and Los Angeles, California, prosecutors have tried, with some success, to obtain court-ordered injunctions against individual gang members who congregate in specific areas.[46] The injunctions sometimes cover many activities that are not criminal. A San Jose injunction, for example, can prohibit certain people from standing, sitting, walking, driving, gathering, or appearing anywhere in public.[47] By a small majority, the California Supreme Court decided that the San Jose law was constitutional.[48]

> ***People ex rel. Gallo v. Acuna***
> **14 Cal. 4th 1090 (1997)**
> The city of San Jose obtained injunctions against 38 people thought to belong to street gangs. The injunctions prevented them from engaging in illegal activities, including using certain drugs, carrying unlicensed weapons, defacing property, and trespassing. But they also prevented them from engaging in legal activities, such as congregating with associates, wearing clothes bearing certain symbols, and carrying a beeper. The California Supreme Court upheld the injunctions, rejecting First Amendment free association arguments because "the street gang's conduct" failed "to qualify ... as protected forms of association." The court found that the city could restrict certain noncriminal activities of habitual lawbreakers to assure the freedom of law-abiding citizens who felt menaced by their neighbors.

Operating under the theory that people involved in minor crimes are often involved in major crimes, New York City has taken tough positions on loitering, begging, and prostitution, earning Mayor Rudolph Giuliani both criticism and praise.[49]

Many communities followed the progression of *Chicago v. Morales* through the courts. They hoped the final decision would allow them to pass similar laws.[50] Tough curfew laws aimed at young people have been passed in many cities. Curfew laws are also intended to keep loiterers off the streets.

In the summer of 1999, Annapolis, Maryland, debated an anti-loitering law. African-American citizens believed that the law would unfairly target people of color. The Annapolis ordinance would authorize the police to order people in public spaces to leave if the officers suspected that drug dealing was taking place or likely to occur.

Some criminologists maintain there are no studies that show that these types of laws work.[51]

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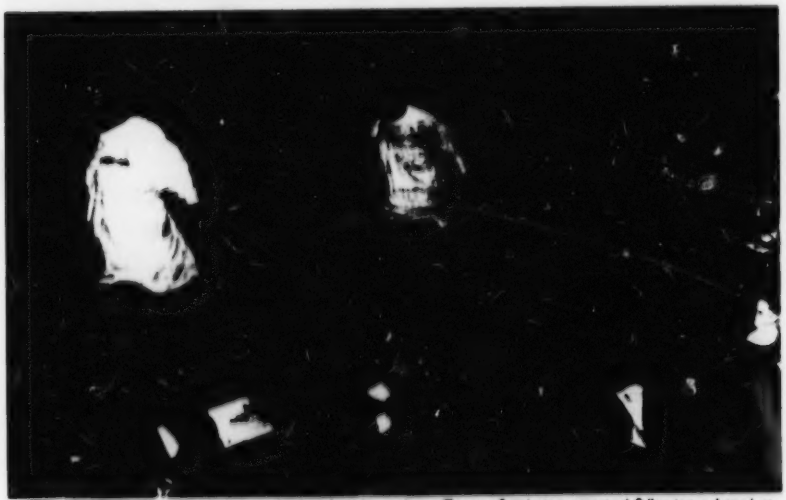
Terms & Vocabulary: community policing

Community Policing

> **Gentlemen, for shame forbear this outrage!**
> **Tybalt, Mercutio, the Prince expressly hath**
> **Forbid this bandying in Verona streets.**
> *(Romeo steps between them.)*
> **Hold, Tybalt! Good Mercutio!**
> *(Tybalt under Romeo's arm thrusts Mercutio in.)*
>
> Romeo, from *Romeo and Juliet*, Act 3, Scene 1, William Shakespeare.

Community policing is a term that encompasses a group of policing practices first initiated in the early 1980s. The practices include police working in partnership with community groups to develop crime prevention strategies appropriate to a particular community's problems, and the use of alternatives to the traditional law enforcement strategies of arrest and prosecution.[52] For example, in Portland, Oregon, a community group worked with the police to convince the Parks Bureau to turn up the sprinklers at night to combat drug dealing in city parks.[53] The police in Portland also created a landlord training program with topics such as applicant screening, warning signs of drug activity, and eviction options. Participants received manuals that included copies of the laws and lists of support groups.[54] Community policing addresses "quality of life" issues of immediate concern to neighborhoods, such as what to do about abandoned buildings and cars. Problem-solving skills, innovation, and response to people's nonemergency needs are essential aspects of successful community policing, which is intended to build trust between the community and the police.[55]

According to its supporters, the concept isn't new. Community policing is a 20th-century version of basic ideas outlined over 160 years ago by Sir Robert Peel, who is credited with establishing the first police force to serve all of London.[56] One of the concept's modern proponents is Lee P. Brown, former police chief of Houston (1982–90) and New York (1990–92). Under Brown, police were expected to deal with quality of life issues, often serving as liaisons for community members to other city and social service agencies.[57] On a typical day, a community police officer might stop for a while to shoot baskets with a group of young people, stop in at a business to talk with merchants, intervene in a domestic dispute, and check on a church alarm.[58]



Alleged gang members are led away by Los Angeles police officers after being arrested following a brawl at 4th and Broadway in downtown Los Angeles during the Cinco de Mayo celebrations. Sunday, May 1, 1994. (Associated Press Photo/Douglas C. Pizac)

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Terms & Vocabulary: civil liberties, Jim Crow laws, racial profiling

The Issue of Race and Racial Profiling

Loitering, vagrancy, and curfew laws are part of a nationwide effort to fight crime by limiting individual civil liberties in the interest of public order and safety. The debates about these laws have often led to discussions of the role of race in law enforcement.[59]

Race becomes an issue for two main reasons:

- The Jim Crow laws of the past were enforced by the police.
- Historically, the first modern loitering laws were aimed at young men of color.

> **Herein lie buried many things which if read with patience may show the strange meaning of being black here at the dawning of the Twentieth Century. This meaning is not without interest to you, Gentle Reader; for the problem of the Twentieth Century is the problem of the color line.**
>
> W.E.B. DuBois, *The Souls of Black Folk*, 1903

The Jim Crow laws were a network of laws that restricted voting rights and segregated blacks in schools. Eventually, they reached into every aspect of life, particularly in the southern United States. For example, blacks had to ride at the backs of buses and were barred from many hospitals. The Jim Crow laws remained in place until the Civil Rights Act of 1964 and the Voting Rights Act of 1965 denied their legality.

The first modern loitering laws were aimed at young men of color who were taken into police custody for loitering as a way to remove them from white neighborhoods.[60] During the 1950s and 1960s, African-American and Latino young men were stopped and searched without consent for social or racial reasons. The first group of loitering laws was declared unconstitutional in the early 1970s.[61]

In Chicago, the police often used the charge of "disorderly conduct" during the 1970s to arrest young minorities. When Chicago Mayor Jane Byrne authorized the police to arrest gang members in the 1980s, many young people who did not belong to gangs were arrested.[62] Mayor Harold Washington, Byrne's successor, publicly apologized to Chicago citizens on behalf of the city for these unlawful practices.[63]

The Supreme Court review of *Chicago v. Morales* took place at a time when the country was focused on racial profiling—a police practice of targeting people for stops, searches, detention, and/or arrest based on their race or ethnicity.[64] In June of 1999, the ACLU issued a 43-page report that compiled media accounts, case studies, and police statistics from 23 states to support the claim that racial profiling is widely practiced by police.[65]

The practice of racial profiling has been difficult to prove because of a lack of statistical information. However, on June 9, 1999, President Clinton instructed federal law enforcement agencies to collect race statistics to "move beyond anecdotes to find out who is being stopped and why."[66] He also asked state and local police to collect similar data.[67] During the same week, the U.S. Department of Justice released a 12-city survey indicating that 24 percent of African Americans polled said they were unhappy with their local police compared to 10 percent of whites polled.[68]

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Terms & Vocabulary: amicus brief, civil liberties, civil rights, community policing, ordinance, pragmatism

Praise and Criticism of the Law

Some newspaper accounts maintained that the ordinance had widespread community support.[69] The Northwest Neighborhood Federation, a coalition of eight community groups on the city's northwest side collected petitions from 10,000 residents who favored actions to curb street gang activity in their neighborhood.[70] It is not clear that the petition asked residents about the ordinance. Several community groups did file joint amicus briefs with the Supreme Court supporting the law. On the other hand, an equal number of community groups filed joint briefs opposing the law.

Groups that praised the ordinance acknowledged it presented a conflict between individual rights and safe streets.[71] They believed the exchange of civil liberties for quality of life to be worthwhile. They also praised the law on pragmatic grounds. They praised the law for taking current social needs into account. They praised its effectiveness.

Groups that criticized the law agreed that gang violence and intimidation was a problem. They criticized it on pragmatic grounds. They claimed it didn't work. It didn't take into account the practice of racial profiling. It didn't take into account a history of police violation of civil liberties and rights. It didn't take into account the negative consequences for the country's large homeless population. The groups that criticized the law also criticized its violation of personal liberties.

The law was praised and criticized using the following arguments.

Praise

- Attacking low-level disorder is an effective way to prevent violent crime.[72]
- The law was welcomed and crafted by the communities in which it was enforced.[73]
- The law recognized that community needs are as important as individual rights.[74]
- The law offered a way for the peaceful majority to take back their streets from a violent minority.
- The law effectively regulated behavior in public spaces.
- Preventing loitering by gang members in front of local stores was good for business.[75]

Teens' Views on Crime

More than one in three (36 percent) junior high and high school students believe that crime is a serious problem in the community. Three in four (75 percent) believe conditions are not changing (51 percent) or are growing worse (24 percent).

From a survey by Louis Harris and Associates for the national Teens, Crime and the Community program, 1996

Teens' Views on Police Stops of Young People

Twenty-eight percent of students say they or their friends have been "hassled" by the police at least a few times when they weren't doing anything wrong. In total, 49 percent of teens say that they or their friends have been "hassled" at least once when they weren't doing anything wrong.

From a survey by Louis Harris and Associates for the national Teen, Crime and the Community program, 1996

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- The law responded to current realities and addressed a real need in high-crime neighborhoods.[76]
- People who criticized the law were people who lived in upper-middle class neighborhoods, where the law wasn't needed.[77]

Criticism

- Rank-and-file minority police officers thought the law was a poor law enforcement practice.[78]
- There was no evidence it was effective or would ever be effective.[79]
- Communities where crime rates are the highest are also where police have abused authority.[80]
- The law gave police too much power over citizens.[81]
- Most of the people arrested under the law were young African-American or Latino males.[82]
- Many people who were arrested under the law were not gang members.[83]
- Arresting innocent people gave them police records that hurt their employment and credit opportunities.[84]
- The law would hurt homeless people who had no choice but to remain in one place.[85]
- The high percentage of homeless teen-agers might be confused with gang members because they are mainly from the same age group.[86]
- The law violated people's rights of assembly, association, and free expression.
- Once the rights of some are limited, the rights of all will be compromised.

Gangs Are Not Just an Urban Issue

According to a 1995 U.S. Department of Justice survey, more than half of all respondents reported youth gang problems. Fifty percent of the cities and towns with reported gang problems had populations of less than 25,000. Ninety percent of the jurisdictions indicated they believed their gang problem would remain the same or worsen.

U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, *1995 National Youth Gang Survey*

Homelessness in Chicago	Homelessness Nationally
6,000	2 million

Statistics from National Law Center on Homelessness and Poverty et al., *Brief in Support of Jesus Morales, et al.*, 1998

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Terms & Vocabulary: arbitrary enforcement of law, common law, injunction, Magna Carta

Freedom of Assembly: Labor Unions

The right to assemble can be traced as far back as the Magna Carta. The Magna Carta was a charter granted by King John of England in 1215 that defined certain obligations between noblemen and the king. For example, it prohibited the arbitrary application of justice. During the 17th century, it was reinterpreted by English thinkers as a democratic document.

Freedom of assembly was important to the framers of the Constitution because they thought the right to assemble was necessary to participate in self-government. Town meetings were held in New England even before the American Revolution. The right to assemble was also a necessary part of the right of people to petition their government—including the king and Parliament—about their concerns. Employers and workers assembled to protest British practices in colonial America.[87] Workers also assembled to protest practices that would lower their standard of living. The tradition of assembly to protest practices that would affect standards of living can be traced back to a strike among fisherman in Maine in 1636.[88] These "turn-outs," as they were called, were fought by employers through the courts using the English common law doctrine of conspiracy.[89]

Common law developed in England as law common to the whole of England. Before that time, different local laws ruled different areas. Common law consists of rules of law based on common custom and usage. As courts developed in England, common law came to include judges' decisions in written reports.

Monopolies and Trusts
A monopoly is a business that controls so much of a product, service, industry, or natural resource that little or no competition exists. A trust is several companies that voluntarily combine and agree to be run as one large enterprise.

The English common law tradition treated labor organizations as illegal alliances that "wrongfully prejudiced a third party." The courts continued to use the common law doctrine of conspiracy to rule that most strikes were illegal until 1842. The Massachusetts Supreme Court was the first court to rule that unions were legal organizations and that the strike was a legal weapon, in the case *Commonwealth v. Hunt* (1842).[90]

By 1895, strikes were being stopped with court interpretations of anti-trust legislation and court injunctions rather than the common law conspiracy doctrine. The judicial and legislative branches of government became increasingly intertwined in the determination of labor rights.

In the late 19th century, Congress passed legislation to keep monopolies and trusts from becoming large and powerful and to regulate competition. Corporate consolidation was seen by elected officials as dangerous and undemocratic. The judiciary believed that unregulated trade was consistent with American constitutional traditions.[91] From the 1880s to the 1920s, the judiciary actively applied antitrust legislation to labor unions.[92] The courts ruled that the Interstate Commerce Act (1887) applied to strikes because they discriminated against interstate commerce.

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Two other pieces of legislation to regulate monopolies were the Sherman Antitrust Act (1890) and the Clayton Antitrust Act (1914). The wording of the Sherman Antitrust Act was unclear. Courts ruled that it applied to labor combinations, not business combinations (Morris 1965, 261). Unions were found guilty of trying to monopolize labor and restrain trade. The Clayton Antitrust Act forbade strike injunctions unless property was threatened and tried to redefine the meaning of labor. It stated that labor wasn't a commodity or an article of commerce. When it was passed, labor leaders called the Sherman Act labor's "Magna Carta." However, courts continued to view labor as a commodity and issued injunctions to halt strikes on the grounds that strikes threatened property.

Thornhill v. State of Alabama, 310 U.S. 88 (1940).
Byron Thornhill was a union president who was arrested for picketing against his former employer because of an Alabama law that made it an offense to picket. The Court found that the law violated the First Amendment's free expression guarantee and held that open discussions about labor were "indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society."

With the passage of the Norris-LaGuardia Anti-Injunction Act (1932), the courts began to rule against the use of the injunction with respect to labor boycotts and disputes. In *National Labor Relations Board v. Jones & Laughlin Steel* (1937), the U.S. Supreme Court ruled that workers in private industry had the right to organize and required employers to bargain with employee representatives.[53]

What is interstate commerce?
Interstate commerce refers to the movement of goods across state lines. Under the U.S. Constitution, the federal government has the power to control and regulate interstate commerce.

During the 1930s and 1940s, the U.S. Supreme Court also changed its position about the application of the First Amendment to the right to strike. Up until that time, courts ruled that the right to organize or strike wasn't protected by the First Amendment's guarantees of freedom to protest and assemble or of free speech. The U.S. Supreme Court began to recognize the right of unions to assemble to protest as part of the First Amendment's guarantee of free expression. With *Hague v. Congress of Industrial Organizations* (1939), the U.S. Supreme Court ruled that union organizers who had been run out of a town could hold meetings and distribute leaflets. In 1940, in *Thornhill v. Alabama*, the U.S. Supreme Court also ruled that picketing was related to the rights of free speech and association. In an argument that can be traced back to the debate about the Constitution, the Court declared that free discussion of labor issues was an important aspect of the process of popular government.[54]

In 1947, with the passage of the Taft-Hartley Act, labor unions began to lose some of the ground gained during the previous 12 years. The Taft-Hartley Act placed some restrictions on picketing. Several cases in the 1950s and 1960s once again established that labor picketing could be regulated—this time because of the public's interest in labor peace.[55]

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Terms & Vocabulary: communism, social control

Freedom of Association: The McCarthy Era

The McCarthy Era refers to a period in American history following World War II characterized by a national fear of communism that persisted through the late 1950s. During the McCarthy Era, government-sanctioned persecution of people suspected of associating with Communists or sympathizing with the ideas of communism was common.

What is an allegory?
A description or illustration of one thing in terms of another that often makes use of symbolic fictional characters.

During World War II, Congress established the House Un-American Activities Committee (HUAC) to find foreign spies in the government. By 1947, the HUAC had initiated a series of highly publicized investigations to prove that communists had infiltrated the government. Congress initiated an Employee Loyalty Program to determine sympathy of employees to communist causes. More than 2,220 federal employees resigned or were dismissed.[96] Then Congress passed the McCarran Internal Security Act (1950). Under the act, communist organizations had to register with the government and publish their records. Communists couldn't work in defense plants and were denied passports.

Senator Joseph McCarthy took up the anti-communist crusade in 1950. He attacked respected public figures such as General George C. Marshall, a high-ranking World War II hero who authored a plan to assist Europe after the war, and J. Robert Oppenheimer, who directed a key atomic weapons project during World War II called the Manhattan Project. The U.S. Supreme Court began to restrict government harassment of Communists and other unpopular political groups after Chief Justice Earl Warren was appointed in 1953. For example, the Supreme Court ruled it was unconstitutional to deny members of the Communist Party a passport, in the case *Kent v. Dulles* (1958).

> The more I read into the Salem panic, the more it touched off corresponding images of common experiences in the fifties.
>
> Arthur Miller, from "Why I Wrote *The Crucible*," *The New Yorker*, 72 (Oct. 21 & 28, 1996): 158–64

Many people lost their jobs, were placed on "blacklists," and were persecuted during the McCarthy Era. Free speech was limited by informal social control in many places of employment, such as college and university campuses. People in the entertainment community, such as playwrights and the black activist, singer, and actor Paul Robeson, were called before the HUAC. The best-known hearings involved professionals in Hollywood. Hollywood industry leaders issued an edict that Communists and people who refused to cooperate with HUAC be dismissed from employment.[97] Ten Hollywood writers and directors refused to cooperate with the committee. The "Hollywood ten," as they were called, were sentenced to jail terms for contempt of Congress. Arthur Miller's play, *The Crucible*, set during the Salem witch trials, is an allegory about the HUAC trials.[98]

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Teaching Activities/Strategies & Discussion Questions

Check for Student Understanding of

American Civil Liberties Union, arbitrary application of the law, authoritarianism, Center for Community Interest, community policing, criteria, civil liberties, civil rights, due process, injunction, Jim Crow laws, National Association for the Advancement of Colored People, ordinance, pragmatism, precedent, probable cause, racial profiling, safe street laws, social control (formal and informal), Washington Legal Foundation. (Optional: allegory, communism, interstate commerce, McCarthy Era, monopoly, trust.)

Teaching Activities/Strategies

1. Conduct a mock city council meeting that includes at least one councilperson whose ward includes many homeless and unemployed people and another whose ward has had serious problems with gangs and crime, along with people who represent other interests and perspectives. Have students discuss the special problems and responsibilities of city council members.

2. Invite experts from the community to visit the class to talk about topics and issues relevant to *Chicago v. Morales*. Experts might include a representative of the local police/sheriff's department; a mayor or city council member; a county district attorney; a family or juvenile court judge; a representative of a local chapter of the ACLU, NAACP, National Urban League, or National Council of La Raza; and a representative of an organization that provides services to the homeless. Allow time for questions.

3. Discuss the importance of the perceptions of others on our decisions. Have students brainstorm activities they engage in to gain status (get good grades, drink alcohol, smoke, tease others). Are there any of these activities that students would engage in, in the company of some people (friends, siblings) but not others (teachers, parents)? Take an anonymous poll. Tally the results. Then take a raised-hand poll. Compare the results of the anonymous poll with the results of the raised-hand poll. Discuss the ways that informal social networks influence our behavior.

4. Have students think about their own interests and concerns. Do they in-line skate, ride a skateboard, or ride a bike? Where do they hang out? Think of places in the community such as a public library, local museum, shopping mall, outdoor public square, pedestrian mall, downtown area, or park. Do these places have implied or posted rules? Does your community have rules prohibiting in-line skaters, skateboarders, or bikers from using equipment on sidewalks? Do parks close at certain times? Does your town have ordinances about all-age shows at music clubs? A curfew law? Discuss why some activities specific to students' experience have limits. Identify the different interests affected by your local laws and who has a stake in placing limits and why.

5. Have students critically read their local newspapers, or critically view local television news, for reports about gang activity, youth crime, or vandalism. Is the media coverage appropriate? Accurate? Biased? If students were reporters, how might they cover these stories differently?

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6. Have students debate an issue suggested by the study of *Chicago v. Morales*. Issues might include

   - Proposition: Public order is more important than individual rights OR Individual rights are more important than public order.
   - The police already have too much power.
   - Our quality of life depends on the prosecution of petty crimes such as vandalism and loitering.

7. Ask students to read the article "The Justices Decide Who's in Charge," from ***The New York Times* Learning Network** at www.nytimes.com/learning/general/featured_articles/990628Amonday.html. Do students agree that the U.S. Supreme Court's decisions overturning laws passed by other governmental bodies (Congress and state and local governments) are within its power as part of the constitutional system of checks and balances? Once laws are overturned, does Congress have power to pass new legislation in response? What about the states?

Discussion Questions

1. What community values were expressed by community support for the Chicago anti-gang congregation law? What values did the opposition to the law support or express?
2. Was the passing of the Chicago anti-gang congregation law an isolated incident, or is it part of a larger trend? If it is part of a trend, what is the scope of the trend, and can you name other kinds of related laws?
3. Why did race become an issue with respect to the Chicago anti-gang congregation law?
4. How does community policing differ from traditional policing tactics?
5. What arguments were used to praise the law? What arguments were used to criticize the law?
6. Which of the freedoms central to the discussion of the Chicago anti-gang congregation law have been essential to the evolution of labor rights?
7. Do extreme laws have extreme consequences? Give some examples.
8. What is the difference between a gang and a clique?
9. If groups of young people are prevented by a law from hanging out in public places, do you think the government has a responsibility to provide them with a legal hangout such as a skateboard park or a community or youth center?
10. What kinds of relationships does freedom of association protect (personal, family, work, volunteer, and so on)? Can someone be barred from elected office or employment based on a past political affiliation?
11. If you felt threatened by people when you walked around your community, would you be willing to give up some of your freedom to feel safe? If so, what freedoms would you be willing to give up and to what degree?
12. How do you [students] view the police? Have you ever been stopped by the police? If so, what was the experience like? Were there any consequences such as a confrontation or punishment? Ask students to discuss their personal experiences with or observation of interaction between police and civilians. How did they feel about what they experienced or observed?

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13. How would you [*students*] feel about being asked by police if you belong to a gang? How would you feel if police assumed you belong to a gang? Do you think that it is possible to develop fair guidelines for police to determine if someone is a gang member when encountering the person on the street? Why or why not? If you answer yes, what guidelines do you think would be fair?

14. Do films perpetuate stereotypes about minorities? If so, what are they? Do you feel that gang members in films are most often played as minorities? Do you feel that gangs are perceived as being predominantly composed of certain ethnic groups or racial minorities?

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Teaching Resources

Online Resources

American Civil Liberties Union (ACLU) Freedom Network
The ACLU has downloadable briefing papers aimed at high school students. Topics include "Freedom of Expression," "Hate Speech on Campus," and "The History of the Bill of Rights." See www.aclu.org/library/brpaper.html.

A Curriculum of United States Labor History for Teachers
From the Illinois Labor History Society. A downloadable curriculum covering the history of labor from the colonial period (1763) to the present day. Includes primary documents, lesson plans, time lines, important concepts, teaching activities, and more. See www.kentlaw.edu/ilhs/curricul.htm.

FACT: First Amendment Cyber-Tribune
An online resource on the First Amendment including information about the right to assemble and the right of association, summaries of relevant U.S. Supreme Court decisions, a bibliography, and links to other First Amendment Web resources. See w3.trib.com/FACT.

The Freedom Forum Online
A variety of information about current First Amendment events and issues. Includes an online column, "First Amendment Outrage of the Week" and links to relevant newspaper and journal articles. See www.freedomforum.org.

***The Grapes of Wrath* by John Steinbeck Study Guide**
By Dr. Donald R. Gallo, Professor of English, Central Connecticut State University. In addition to providing an introduction to the Great Depression, this classic novel explores the lives of wanderers and migrant laborers. Each night, the homeless recreate society. See www.globalserve.net/~glamont/Grapegde.htm.

National Council of La Raza (NCLR) Web Site
Includes information about applied research, policy analysis, and Latino perspectives on current issues and civil rights, including migrant labor. Also offers publications on topics such as Latino civil rights and criminal justice and statistics on Hispanics. See nclr.org.

The National Law Center on Homelessness and Poverty Web Site
Includes general information about the homeless, fact sheets about their legal and civil rights, reports, and links to other useful sites. See www.nlchp.org/cvlrght.htm.

The National Urban League Web Site
Offers a variety of information about civil rights including publications about racial and social inequality. The president writes a weekly column "To Be Equal" on important legal and social issues that is archived online. See www.nul.org.

The National Youth Gang Center Web Site
A U.S. government site offering statistical data about gangs, information about gang-related legislation, and fact sheets. See www.iir.com/nygc/maininfo.htm.

***The New York Times* Learning Network Lesson Plans Archive**
You can search this archive of lesson plans for use with *The New York Times* articles in class. Links are provided to the articles. Lessons are retrievable by keyword searches. Under "civil liberties," the lesson list includes "Laws and Force in Law Enforcement: Exploring Police Brutality and Individual Rights" and "A Test Case for Individual Rights: Assessing Whether Student Drug Testing Violates Student Rights." See *The New York Times* Learning Network at www.nytimes.com.

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Print Resources

"Civil Society," by Patricia Williams. In *The Nation*, July 19, 1999. Short anecdotal story by a law professor about racial profiling as a practice that affects African Americans and Latinos of all classes.

"Crafting Local Responses to Gang Problems: Case Studies from Five Cities," by Ellen Painter and Deborah Lamm Weisel. In *Public Management* (July 1997), 79: 4. Discusses the responses of five cities to gang problems. Can be accessed through the **Wilson Select Database** at a local public library.

"Culture Clash on Main Street: Downtown Royal Oak's Merchants and Kids Are Waging a Quiet Turf War," by Michael McWilliams. In The Detroit News, July 10, 1998. Describes clashes of culture among yuppies, goths, skaters, punks, and merchants. Students may relate to the way the article identifies cliques and the tensions between the culture of the young and other citizens. See www.detnews.com/1998/accent/9807/10/07100016.htm.

Exploring the Constitution: Freedom of Speech, Press, and Assembly by Darien McWhirter, Oryx Press, 1994. This book for young adults reviews the 19th-century discussion of the right to free speech as background to 20th-century court decisions and modern interpretations and applications of freedoms.

Freedom of Association, edited by Amy Gutman, Princeton Univ. Press, 1999. A collection of essays by leading thinkers in history, law, policy, and political philosophy divided between the individual and civic values of association.

"Guilty Feet," by Jennifer Vogel. In *Mother Jones* (March 1999), 24(2): 16. Describes Seattle's Teen Dance Ordinance, which prohibits most clubs from hosting all-ages shows. Can be accessed and downloaded through the **Wilson Select Database** at a local public library.

"The Offense: Driving While Black," by Hugh B. Price. In *Crisis* (July 1998), 105(3): 14. Short article about allegations of racial profiling against the New Jersey State Police. Can be accessed and downloaded through the **Wilson Select Database** at a local public library.

"Rash of Racial Profiling Forces Black Parents to Prepare Young Drivers for Police Stops." In *Jet* (March 29, 1999), 95(17): 7. Short article describing the impact of racial profiling on newly licensed teens and their parents.

The Rights Revolution: Rights and Community in Modern America, by Sam Walker, Oxford Univ. Press, 1998. Walker argues that the civil liberties gains of the 20th century embody the American ideals of morality and community and guarantee the true development of democracy, tolerance, and community.

"Sheltered Vagrancy in Marilynne Robinson's Housekeeping," by Jacqui Smyth. In *Studies in Contemporary Fiction* (Spring 1999), 40(3): 281. The concepts of home and vagrancy, central issues in Robinson's novel about two teen-aged girls and their guardian-aunt, are explored in this article. Can be accessed and downloaded through the **Expanded Academic ASAP Database** at a local public library.

"A True-Blue Red in Hollywood: An Interview with Paul Jarrico," by Patrick McGilligan. In *Cineaste* (1997), 23(2): 32–39. An excerpt from an interview with a screenwriter and civil liberties activist who fought the HUAC-generated Hollywood blacklist in court. The longer interview originally appeared in *Tender Comrades: A Backstory of the Hollywood Blacklist*, St. Martin's Press, 1997. (Trade paper 1999). Can be accessed and downloaded through the **Wilson Select Database** at a local public library.

Voices from the Streets: Young Former Gang Members Tell Their Stories, by S. Beth Atkins, Little, Brown, & Company, 1996. This book for readers in grades 8–12 received good reviews from *Booklist*, *Kirkus Reviews*,

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and *Horn Books*. First-person interviews, photos, journal entries, and poetry explore the lives of former gang members, why they became involved in gangs, and what led them to leave. Stories by two adult intervention workers provide perspectives on gangs. Bibliography and glossary included.

Videos

The Crucible (1996 U.S. Version by Nicholas Hynter, Rated PG-13). (1957 French Version by Raymond Rouleau, Not Rated). This adaptation of Arthur Miller's play about the Salem witchcraft trials captures the hysteria of the Red scare of the 1940s–'50s. Jean-Paul Sartre wrote the screenplay for the 1957 version, which was produced in France because of the American political climate. Miller, who wrote the screenplay for the 1996 version, criticized Sartre's version for its overlay of class conflict. View ahead or consult **Teach With Movies** "Learning Guide" for this movie for more information or suitability at www.teachwithmovies.org/guidess/grapes-of-wrath.html.

The Grapes of Wrath by John Ford (Not Rated). The film explores the life of migrant laborers and the homeless. The main characters in the film spend time in a "Hooverville." Film also refers to "Reds" and shows how associations may be used to prejudice some people against others. **Teach With Movies** has a "Learning Guide" for this movie at www.teachwithmovies.org/guidess/grapes-of-wrath.html.

Mi Vida Loca by Allison Anders (Not Rated). A study of girl gangs in Los Angeles' Echo Park, this anecdotal film offers an impression of the world of these young women and how the gang performs certain social functions that may be missing elsewhere.

Ordinary Americans: The Red Scare (Not Rated, available October 1999). This video from the Close Up Foundation tells the stories of eight average Americans whose lives were caught in the spotlight of suspicion during the early days of the Cold War. Teacher's Guide available. Video and teacher's guide: $79.95. See www.closeup.org/videos.htm.

Riding the Rails (Not Rated). More than a quarter of a million teen-agers lived on the road during the Great Depression, many crossing the country by hopping freight trains. This film tells the story of these teen-age hobos and homelessness within the context of U.S. history. From **PBS Online** www.pbs.org/: $19.95. For Teacher's guide, time lines, and maps, see www.pbs.org/wgbh/pages/amex/rails.tguide/index.html.

Seeking Solutions with Hedrick Smith. (Not Rated). A blend of documentary segments and public dialogues produced and reported by a Pulitzer Prize-winning journalist. This three-part series about community response focuses on teen crime and street crime, and part three is about hate crimes and prejudice. Single video: $129.00 Series: $349.00. From **Films from the Humanities & Sciences**: 800-257-5126 or www.films.com. Also see **PBS Online** for an interview with Smith at www.pbs.org/seekingsolutions/about.

Skin Deep (Not Rated). A tale of the complexities of race relations in the United States today, as experienced by a candid group of college students. From PBS Online: $78.00. Also see Curriculum guide at www.pbs.org/skindeep/guide/curriculum.htm.

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Appendix I

Amici Curiae Briefs Arguing the Anti-Gang Congregation Law Was Unconstitutional

- ***Joint brief:*** National Black Police Association, Chicago National Black Police Association, Hispanic National Law Enforcement Association, and National Association for the Advancement of Colored People Legal Defense and Educational Fund, Inc.
- ***Joint brief:*** National Law Center on Homelessness and Poverty, National Alliance to End Homelessness, National Coalition for the Homeless, Chicago Coalition for the Homeless, and National Network for Youth.
- ***Joint brief:*** Illinois Attorneys for Criminal Justice, Chicago Alliance for Neighborhood Safety, U.S. Rep. Jesse Jackson Jr., Community Renewal Society, National Association for the Advancement of Colored People, National Council of La Raza, Mexican-American Legal Defense Fund, Chicago Council of Lawyers, Cook County Bar Association, Puerto Rican Bar Association of Illinois, the Black Leadership Forum Inc., Chicago Conference of Black Lawyers and Chicago Community Organizations.
- The National Association of Criminal Defense Lawyers.

Amici Curiae Briefs Arguing the Anti-Gang Congregation Law Was Constitutional

- ***Joint brief:*** The U.S. Conference of Mayors, National League of Cities, National Association of Counties, National Governor's Association, Council of State Governments, International City/County Management Association, and International Municipal Lawyers Association.
- The Center for Community Interest.
- Los Angeles County.
- ***Joint brief:*** Washington Legal Foundation, U.S. Reps. Henry Hyde and Luis V. Gutierrez, Allied Educational Foundation, Northwest Neighborhood Federation, and West Avalon Civic Group.
- ***Joint brief:*** Ohio, Alabama, Alaska, Arizona, California, Colorado, Connecticut, Illinois, Indiana, Kansas, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, Rhode Island, South Carolina, South Dakota, Utah, Commonwealths of Kentucky, Pennsylvania, Puerto Rico, and Virginia and Territory of Virgin Islands.
- ***Joint brief:*** Chicago Neighborhood Organizations, National District Attorneys Association, and International Chiefs of Police.

Interest Groups

American Civil Liberties Union (ACLU)
Founded in 1920 in New York, largely to protest the government's suspension of free speech of pacifists who opposed American involvement in World War I, the ACLU is a public interest organization devoted to protecting the civil liberties of all Americans through litigation, legislation, and public education about issues affecting individual freedom in the United States.

Center for Community Interest (CCI)
The CCI is a national, nonprofit organization interested in civic and community life and an advocate of "civil abatement laws," also known as "safe street laws." See "Community Policing" section.

National Association for the Advancement of Colored People (NAACP)
An organization founded in 1910 originally to eradicate lynching, the NAACP evolved into a civil rights organization dedicated to ending inequality and segregation for African Americans through nonviolent protest. The NAACP has focused on bringing court challenges to discriminatory practices—the best-known of which may be the forced end of overt segregation in the nation's schools through the court case *Brown v. Board of Education*.

Washington Legal Foundation
A nonprofit, conservative, public interest law and policy center that devotes a large portion of its resources to criminal justice reform and crime prevention efforts, the foundation has been involved in both legislative and court efforts to ensure that "law-abiding citizens can feel safe while walking down the street."

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Appendix 2

Romeo and Juliet and Public Disorder

While a one-to-one parallel cannot be made between the Renaissance culture depicted in *Romeo and Juliet* and contemporary street life, both the situations in the play and the characters have modern echoes. The feud in the play leads to public disorder, and the traits of some of the characters brilliantly depict the interaction that can quickly escalate into that disorder. Scenes from *Romeo and Juliet* can be used to illustrate the relevance of Shakespeare to modern concerns, relate the feud in the story to current social concerns, and show how questions of the relationship between law and public order are timeless social concerns. Scenes to use in the discussion are listed below.

Prologue, and Act 1, Scene 1: Loitering of warring factions can lead from insults to challenges to full-scale riot. Tybalt, the arrogant hothead, and Benvolio, the peacemaker, who fights against his better judgment, are introduced. The Prince's speech in this scene shows that societies predating constitutional governments by centuries were also concerned about keeping the peace on the public streets.

Act 2, Scene 4: Classic scene depicting "hanging out" and how it can develop into teasing and harassment (of the Nurse).

Act 3, Scene 1: Charactenstics of the individual members of the two families aggravate the meeting of opposing factions that leads to two deaths. Characters and traits include

- Tybalt: arrogant and looking for a fight, the challenger.
- Benvolio: peacemaker but sticks by his friends.
- Mercutio: vain of his wit, jealous of his honor and that of his friends, but loyal to his friends.
- Romeo: prefers peace because of his secret relationship with Juliet but because of his feeling of guilt over the death of Mercutio, gets drawn into the action that is against his basic interests.

The last part of this scene is a mini-trial, with Benvolio as the honest witness and the Prince as judge and jury.

Act 5, Scene 5: The Prince's commentary on the toll of public strife.

> Rebellious subjects, enemies to peace,
> Profaners of this neighbor-stained steel—
> Will they not hear? What ho, you men, you beasts!
> That quench the fire of your pernicious rage
> With purple fountains issuing from your veins
> On pain of torture, from those bloody hands
> Throw your mistempered weapons to the ground,
> And hear the sentence of your moved prince.
> Three civil brawls, bred of an airy word,
> By thee, old Capulet, and Montague,
> Have thrice disturbed the quiets of our streets,
> And made Verona's ancient citizens
> Cast by their grave beseeming ornaments
> To wield old partisans, in hand as old,
> Cankered with peace, to part your cankered hate;
> If ever you disturb our streets again,
> Your lives shall pay the forfeit of the peace.
>
> The Prince,
> Act 1, Scene 1, *Romeo and Juliet*
> William Shakespeare

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Chicago Municipal Code 8-4-015 (1992) Gang-Related Congregations

(a) Whenever a police officer observes a person whom he reasonably believes to be a criminal street gang member loitering in any public place with one or more other persons, he shall order all such persons to disperse and remove themselves from the area. Any person who does not promptly obey such an order is in violation of this section.

(b) It shall be an affirmative defense to an alleged violation of this section that no person who was observed loitering was in fact a member of a criminal street gang.

(c) As used in this section:

(1) "Loiter" means to remain in any one place with no apparent purpose.
(2) "Criminal street gang" means any ongoing organization, association in fact or group of three or more persons, whether formal or informal, having as one of its substantial activities the commission of one or more of the criminal acts enumerated in paragraph (3), and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.
(3) "Criminal gang activity" means the commission, attempted commission, or solicitation of the following offenses, provided that the offenses are committed by two or more persons, or by an individual at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members:

> The following sections of the Criminal Code of 1961: 9-1 (murder), 9-3.3 (drug-induced homicide), 10-1 (kidnapping), 10-4 (forcible detention), subsection (a)(13) of Section 12-2 (aggravated assault-discharging firearm), 12-4 (aggravated battery), 12-4.1 (heinous battery), 12-4.2 (aggravated battery with a firearm), 12-4.3 (aggravated battery of a child), 12-4.6 (aggravated battery of a senior citizen), 12-6 (intimidation), 12-6.1 (compelling organization membership of persons), 12-11 (home invasion), 12-14 (aggravated criminal sexual assault), 18-1 (robbery), 18-2 (armed robbery), 19-1 (burglary), 19-3 (residential burglary), 19-5 (criminal fortification of a residence or building), 20-1 (arson), 20-1.1 (aggravated arson), 20-2 (possession of explosive or incendiary devices), subsections (a)(6), (a)(7), (a)(9) or (a)(12) of section 24-1 (unlawful use of weapons), 24-1.1 (unlawful use or possession of weapons by felons or persons in the custody of the Department of Corrections facilities), 24-1.2 (aggravated discharge of a firearm), subsection (d) of Section 25-1 (mob action-violence), 33-1 (bribery), 33A-2 (armed violence); Sections 5, 5.1, 7 or 9 of the Cannabis Control Act where the offense is a felony (manufacture or delivery of cannabis, cannabis trafficking, calculated criminal cannabis conspiracy and related offenses); or Sections 401, 401.1, 405, 406.1, 407 or 407.1 of the Illinois Controlled Substances Act (illegal manufacture or delivery of a controlled substance, controlled substance trafficking, calculated criminal drug conspiracy and related offenses).

(4) "Pattern of criminal gang activity" means two or more acts of criminal gang activity of which at least two such acts were committed within five years of each other and at least one such act occurred after the effective date of this section.
(5) "Public place" means the public way and any other location open to the public, whether publicly or privately owned.

(d) Any person who violates this section is subject to a fine of not less than $100.00 and not more than $500.00 for each offense, or imprisonment for not more than six months, or both.

In addition to or instead of the above penalties, any person who violates this section may be required to perform up to 120 hours of community service, pursuant to Section 1-4-120 of this code. (Added. Coun. J. 6-17-92 p. 18292)

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Civil Liberties Back on the Street

Anti-gang efforts struck down; ruling criticized as creating a 'right to loiter'

By DAVID G. SAVAGE
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Chicago's effort to sweep the streets of those who appeared to be gang members has resulted in an old-fashioned lesson in civil liberties from the U.S. Supreme Court.

The police cannot be given the unfettered power to arrest persons, the Court stated, if the offense essentially entails nothing more than standing on a street corner.

The anti-gang law fails to distinguish "between innocent conduct and conduct threatening harm," argues Justice John Paul Stevens, a native of Chicago. The Constitution does not allow a legislature to create a net so large that police can sweep up all possible offenders, he wrote. *Chicago v. Morales*, No. 97-1121 (June 10).

Luis Gutierrez, a Chicago resident who was arrested in 1995 while talking to friends, applauds the decision. He says he is not a gang member, but suspects he was targeted partly because of his Hispanic appearance. "I think the decision is great," he says. "I don't think that violating constitutional rights is going to solve the gang problem."

Injustice Outweighs Benefit

The 1992 ordinance told police to target young men who were seen "loitering in any public place ... with no apparent purpose." Whenever a suspected gang member was among them, officers were told to order everyone to disperse. Those who failed to move on faced arrest.

Within three years, officers made 42,000 arrests under the law, and the city's homicide rate dropped by one-fourth, Chicago officials said. But lawyers for the American Civil Liberties Union of Illinois challenged the law's constitutionality and complained that black and Hispanic young men were being given criminal records unfairly.

Citing precedent, the Court struck down the ordinance in a 6-3 ruling, holding that the law was void for vagueness and was a violation of the due process clause. The justices cited a 1965 case, *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, overturning a Birmingham, Ala., anti-loitering law used against black picketers.

Justice Antonin Scalia read an angry dissent from the bench, mocking his colleagues for creating a "fundamental right to loiter." Chief Justice William H. Rehnquist and Justice Clarence Thomas dissented separately.

The ruling was not a total loss for city lawyers, however. The justices stressed that with a little tinkering, gang loitering could be attacked legally. Justice Sandra Day O'Connor suggested a new law might target gang members who were loitering in a way to "intimidate others ... or to establish control" over a particular area.

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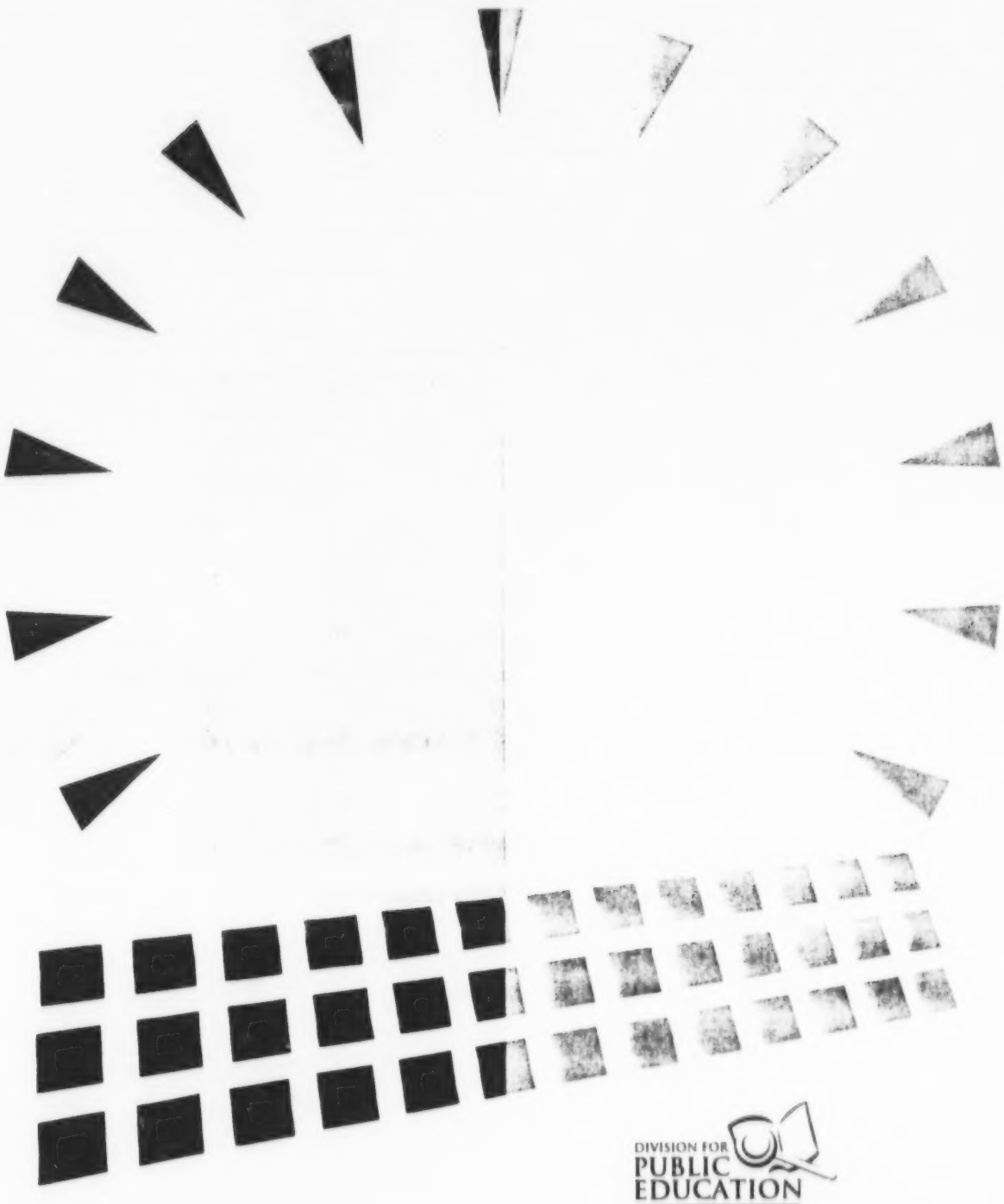

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